

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-7656
Summary Calendar

JAMES R. CLARK,

Plaintiff-Appellant,

VERSUS

DONNA SHALALA,
Secretary of Health and Human Services,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Mississippi
(CA-1:92-325-S-0)

(August 25, 1994)

Before SMITH, WIENER, and PARKER, Circuit Judges.

PER CURIAM:*

James Clark appeals the denial of disability insurance benefits under 42 U.S.C. § 405(g). Finding no error, we affirm.

* Local Rule 47.5.1 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that rule, the court has determined that this opinion should not be published.

I.

Clark filed an application for disability insurance benefits on February 21, 1991. In his disability report, Clark alleged that he suffered from high blood pressure, heart disease, and sickle-cell disease and that these illnesses prevented him from working.

Clark's application was denied initially and on reconsideration, and he requested a hearing before an Administrative Law Judge ("ALJ"). Following a hearing, the ALJ determined that Clark was not under a disability as defined in the Social Security Act prior to the expiration of his disability insured status on March 31, 1986; thus he was not eligible for disability insurance benefits. Clark sought review before the Appeals Council, which denied his request for review, and the decision of the ALJ became the final decision of the Secretary.

Upon review, the magistrate judge found that the Secretary's decision was supported by substantial evidence in the record and recommended that it be affirmed. After considering Clark's objections, the district court adopted the magistrate judge's report and recommendation.

II.

Clark argues generally that the ALJ's decision is not supported by the law or the evidence. He contends specifically that the ALJ's decision is contrary to this court's decision in Stone v. Heckler, 752 F.2d 1099 (5th Cir. 1985).

Our review of the denial of disability insurance benefits is

limited to two issues: (1) whether the Secretary applied the proper legal standards and (2) whether the Secretary's decision is supported by substantial evidence on the record as a whole. Anthony v. Sullivan, 954 F.2d 289, 292 (5th Cir. 1992).

III.

The Secretary conducts a five-step sequential analysis in determining whether a claimant is disabled: (1) whether the claimant is presently working; (2) whether the claimant has a severe impairment; (3) whether the impairment is listed, or equivalent to an impairment listed, in Appendix 1 of the regulations; (4) whether the impairment prevents the claimant from performing past relevant work; and (5) whether the impairment prevents the claimant from performing any other substantial gainful activity. 20 C.F.R. § 404.1520; Muse v. Sullivan, 925 F.2d 785, 789 (5th Cir. 1991). "A finding that a claimant is disabled or is not disabled at any point in the five-step review is conclusive and terminates the analysis." Lovelace v. Bowen, 813 F.2d 55, 58 (5th Cir. 1987).

At step one, the ALJ found that Clark had not engaged in substantial gainful activity since March 2, 1986. At step two, the ALJ found that on or prior to March 31, 1986, Clark suffered from chest-pain syndrome that was most likely musculoskeletal in origin, cholesterolosis of the gallbladder, and sickle-cell trait with no residuals. The ALJ further found that Clark's "alleged severity of pain and restricted mobility [was] not credible concerning his

condition on or prior to March 31, 1986." The ALJ noted that no treatments or medications were administered for Clark's conditions and that, during the period in question, Clark "had normal blood pressures, normal Thallium scans, [and] normal cardiac catheterizations." The ALJ determined that Clark's "impairments, singly, and in combination, can be considered only a slight abnormality having such minimal effect on [Clark] that they would not be expected to interfere with his ability to work, irrespective of age, education, or work experience." The ALJ determined that because Clark did not have an impairment that would have significantly limited his ability to perform basic work-related functions, he did not have a "severe impairment" in accordance with § 404.1521 and was not under a disability for purposes of entitlement to benefits. Thus, the determination of "not disabled" was made at step two of the analysis.

The ALJ applied the proper legal standard in evaluating Clark's disability claim. We now examine whether the factual findings are supported by substantial evidence.

IV.

If the Secretary's findings are supported by substantial evidence, they are conclusive and must be affirmed. Anthony, 954 F.2d at 295. "Substantial evidence is that which is relevant and sufficient for a reasonable mind to accept as adequate to support a conclusion; it must be more than a scintilla, but it need not be a preponderance." Id. "This Court may not reweigh the

evidence or try the issues de novo Rather, conflicts in the evidence are for the Secretary to resolve." Id.

As the claimant, Clark bears the burden of showing that he is disabled within the meaning of the Social Security Act. Cook v. Heckler, 750 F.2d 391, 393 (5th Cir. 1985). The Act defines disability as the "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which . . . has lasted or can be expected to last for a continuous period of not less than twelve months." 42 U.S.C. §§ 416(i)(1), 423(d)(1)(A), 1382c(a)(3)(A).

To determine whether substantial evidence of disability exists, four elements of proof must be weighed: (1) objective medical facts; (2) diagnoses and opinions of treating and examining physicians; (3) claimant's subjective evidence of pain and disability; and (4) claimant's age, education, and work history. DePaepe v. Richardson, 464 F.2d 92, 94 (5th Cir. 1972). The entire record is reviewed to determine whether such evidence is present. Villa v. Sullivan, 895 F.2d 1019, 1022 (5th Cir. 1990).

v.

Clark sought treatment in May 1977 at Mississippi Baptist Hospital for chest pain that was occasionally relieved by nitroglycerin. Dr. McKamy Smith noted that although certain characteristics of the pain were suggestive of angina pectoris, others were not, and he reported that both a cardiac examination and chest x-rays yielded normal results. Further, a cardiac

catheterization revealed no significant atherosclerotic disease of the left main, left anterior descending, or the prominent left circumflex system. The left ventricular size and function were "completely within normal limits." The catheterization revealed "minimal atherosclerotic disease," as evidenced by the "isolated distal occlusion" of the non-dominant right coronary artery, for which no specific medication was prescribed.

Following complaints of increasing symptoms, Smith examined Clark again on November 4, 1980. A chest x-ray and echocardiographic and thallium stress tests yielded results within normal limits, with the sole exception of an inadequate chronotropic response, and Smith concluded that Clark had not experienced a progression of atherosclerotic coronary artery disease since 1977 and that his recent discomfort was "most likely not cardiac in origin." A subsequent chest x-ray in January 1985 also yielded normal results.

Smith examined Clark again in February 1986, based upon Clark's complaints of increasing chest-pain syndrome. Clark stated that the pain "may occur once or twice a day" and was sometimes relieved by nitroglycerin. Although Clark's blood-pressure reading was in the normal range and his electrocardiographic pattern remained unchanged since 1980, cardiac auscultation revealed mid-systolic click and a late systolic murmur suggestive of mitral valve prolapse. Smith recommended a treadmill exercise test, but Clark declined for economic reasons. Smith thus prescribed Procardia.

In 1977, Smith found that Clark had "no critical coronary artery disease" but had cholesterolosis of the gallbladder and sickle-cell trait. Upon further examination in 1980, Smith found no evidence of organic cardiac disease, in particular coronary artery disease, valvular hear disease, or hypertrophic cardiomyopathy. He concluded that Clark's chest-pain syndrome was "most likely musculoskeletal in etiology" and stated that Clark would not be limited from a cardiovascular standpoint. When Smith examined Clark in 1986, cardiac auscultation revealed mid-systolic click and a late systolic murmur suggestive of mitral-valve prolapse, but Clark declined further diagnostic testing.

Clark testified at the hearing that he experienced chest pain "in spells," lasting eight to ten minutes, occurring weekly or every other week, depending upon his level of exertion. He testified that chopping wood or bending and "stooping down" would cause chest pain but that walking a couple of miles would not necessarily cause him to have pain. He stated that he took nitroglycerin to relieve the pain.

VI.

At the time his insured status expired in 1986, Clark was forty-seven years of age with a tenth-grade education and past relevant work experience as a sawmill laborer and a small appliance installer. Clark argues that the ALJ's decision is contrary to Stone, in which this court stated that an "`impairment can be considered as not severe only if it is a slight abnormality

[having] such minimal effect on the individual that it would not be expected to interfere with the individual's ability to work, irrespective of age, education or work experience.'" The ALJ stated, however, that he had "specifically considered" Stone, and applied the correct legal standard.

The ALJ determined that Clark's "impairments, singly, and in combination, can be considered only a slight abnormality having such minimal effect on [Clark] that they would not be expected to interfere with his ability to work, irrespective of age, education, or work experience." The ALJ determined that because Clark did not have an impairment that would have significantly limited his ability to perform basic work-related functions, he did not have a "severe impairment" in accordance with § 404.1521 and was not under a disability for purposes of entitlement to benefits.

The ALJ further found that Clark's complaints of the severity of his pain and his restricted mobility were not credible. An ALJ's findings "regarding the debilitating effect of the subjective complaints are entitled to considerable judicial deference.'" Haywood v. Sullivan, 888 F.2d 1463, 1470 (5th Cir. 1989) (citation omitted).

Clark's reliance upon Lovelace, 813 F.2d at 59, for the proposition that disability benefits should not be denied because he was unable to afford the recommended treadmill exercise testing is misplaced. In Lovelace, we held that although a condition that can be remedied by treatment is not disabling, a person unable to afford such treatment is considered disabled. Id. As the

magistrate judge stated, however, "the treadmill test suggested by Smith was not to be a form of treatment but was a diagnostic test to rule out cardiac problems as the source of [Clark's] chest pain." This case is thus factually distinguishable from Lovelace. Further, Clark cites no authority for the proposition that financial inability to pay for diagnostic tests can serve as a basis for an award of disability insurance benefits. See Harper v. Sullivan, 887 F.2d 92, 97 (5th Cir. 1989).

The Secretary applied the proper legal analysis, and the decision at the second step, i.e., that Clark did not have a severe impairment, is supported by substantial evidence on the record as a whole. The judgment is AFFIRMED.